

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN COSBY, III.,

Defendant-Appellant.

UNPUBLISHED

April 30, 1999

No. 202820

Oakland Circuit Court

LC No. 96-143772 FC

Before: Gage, P.J., and Gribbs and Hoekstra

MEMORANDUM.

Defendant appeals by right his sentences for his plea-based convictions of armed robbery, MCL 750.529; MSA 28.797, felonious assault, MCL 750.82; MSA 28.277, and habitual offender, second offense, MCL 769.10; MSA 28.1082. We affirm.

The trial court indicated that if it concluded that it could not sentence defendant to a minimum term within the recommended guidelines range of ten to twenty-five years for the offense of armed robbery, defendant would be permitted to withdraw his pleas. *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993). With that understanding, defendant pleaded guilty to three counts of armed robbery, two counts of felonious assault, and to the supplemental charge of habitual offender, second offense. The court sentenced defendant to concurrent terms of twenty-five to fifty years for the convictions of armed robbery, and to enhanced sentences of four to six years for the convictions of felonious assault. These sentences were ordered to run consecutively to the paroled sentence defendant had been serving when he committed the offenses.

Defendant argues that his minimum term of twenty-five to fifty years is disproportionate. We disagree and affirm. Defendant's sentence is in accordance with his plea agreement reached pursuant to *Cobbs*, *supra*, and thus demonstrates his agreement that the sentence is proportionate. *People v Rodriguez*, 212 Mich App 351, 355; 538 NW2d 42 (1995). Moreover, the sentencing guidelines do not apply to habitual offenders. *People v Williams*, 223 Mich App 409, 412; 566 NW2d 649 (1997). The standard of review for a sentence imposed on an habitual offender is abuse of discretion. If an habitual offender's underlying criminal history demonstrates that he is unable to conform his conduct to the law, a sentence within the statutory limits does not constitute an abuse of discretion. *People v*

Hansford (After Remand), 454 Mich 320, 323-324, 326; 562 NW2d 460 (1997). Defendant had an extensive prior criminal record, and committed the instant offenses while on parole. Defendant's sentence is within statutory limits, and does not constitute an abuse of discretion.

Affirmed.

/s/ Hilda R. Gage
/s/ Roman S. Gibbs
/s/ Joel P. Hoekstra